

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DWAYNE MONTGOMERY,
Plaintiff,
v.
M. CULUM, et al.,
Defendants.

No. 2:22-cv-1156-KJM-KJN P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 28, 2023, the magistrate judge filed findings and recommendations, which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within fourteen days. F&R, ECF No. 17. Plaintiff has not filed objections to the findings and recommendations.

The court presumes any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo. *See Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) (“[D]eterminations of law by the magistrate judge are reviewed de novo by both the district court and [the appellate] court

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1 . . .”). Having reviewed the file, the court finds the findings and recommendations to be
2 supported by the record and by the proper analysis.

3 The court writes separately to confirm plaintiff cannot raise a claim based on court orders
4 in *Coleman v. Newsom*, Case No. 90-CV-520-KJM-DB (E.D. Cal). While orders in *Coleman*
5 illuminate the requirements of the Eighth Amendment as applied to seriously mentally ill inmates,
6 see generally *Coleman v. Brown*, 28 F. Supp. 3d 1068 (E.D. Cal. 2014), the court “cannot create
7 or expand constitutional rights,” *Cagle v. Sutherland*, 334 F.3d 980, 987 (11th Cir. 2003). For
8 that reason, *Coleman* orders do not give rise to an independent cause of action under 42 U.S.C.
9 § 1983. As the magistrate judge found, plaintiff’s third claim states a cognizable claim for relief
10 under the Eighth Amendment against defendants. The court notes plaintiff’s third claim for relief
11 may encompass alleged Eighth Amendment violations based on use of force on mentally ill
12 inmates either under the umbrella of, or separate from, the Eighth Amendment requirements for
13 adequate mental health care.

14 Accordingly, IT IS HEREBY ORDERED:

- 15 1. The findings and recommendations filed March 28, 2023, are adopted in full; and
16 2. To the extent plaintiff has raised one or more claims based solely on *Coleman v.*
17 *Newsom*, Case No. 90-cv-0520 KJM DB P, those claims are dismissed.

18 DATED: July 11, 2023.

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21 CHIEF UNITED STATES DISTRICT JUDGE
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